

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.210 OF 2017
(Arising out of SLP(C)No.11551 of 2015)

STATE OF WEST BENGAL & ORS. ... APPELLANT(S)

VS.

TUHIN SULTAN MALLICK & ORS. ... RESPONDENT(S)

J U D G M E N T

KURIAN, J.

1. Leave granted.

2. The respondents have complained of non-implementation, rather violation of order dated 26th June, 2009 passed by the West Bengal Administrative Tribunal. The issue pertains to appointment to the post of Lower Division Assistant. In the order referred to above, it was held as follows:

"So assessing the aforesaid undisputed position in these two applications (being No.OA-3092 of 2007 as also OA-3811 of 2008), we find that these 6 petitioners all are qualified to be considered for appointment to the aforesaid posts. The aforesaid position however has not been disputed from the side of the State respondents.

Consequently, we direct the concerned State Respondent to issue orders for appointment in accordance with law for the aforesaid posts in favour of these 6 petitioners within a period of 15 days from the date of communication of this order after observing all necessary formalities."

3. The operative portion of the order, no doubt, contains a direction for appointment after observing the required formalities. But the same has to be understood in the background of the earlier finding by the Tribunal that the writ petitioners-respondents herein had been qualified to be considered for appointment as Lower Division Assistants. In other words, the Tribunal in the order only intended that the writ petitioners had become eligible for consideration for appointment as Lower Division Assistants. It has come out on facts that their turn had not arisen and before their turn matured, the vacancies had already been filled up. Therefore, there was no scope for any appointment. It appears that the High Court missed this crucial aspect and thus went wrong in issuing a direction for appointment.

4. In view of the above, we set aside the impugned judgment of the High Court. The appeal is accordingly allowed.

Pending application, if any, also stands disposed of.

.....J.
[KURIAN JOSEPH]

.....J.
[A.M.KHANWILKAR]

New Delhi;
January 6, 2017.



JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT